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<p style="text-align: right;">Page 70</p> <p>1 When you finish your question, I'll put my 2 objection on the record. Sorry, I apologize 3 for interrupting. 4 MR. FORTENBERRY: (Continuing.) 5 Q The ability to hire social workers to 6 reduce case load sizes is contingent upon funding from 7 the legislature? 8 MR. LANG: I object on the record to 9 counsel asking the witness to agree with his 10 legal conclusions knowing that the witness 11 has -- is not an attorney. 12 A I am -- I am not an attorney. I don't -- 13 I can't comment as an expert to these Mississippi code 14 sections and whatever. That's -- that's my answer. 15 MR. FORTENBERRY: (Continuing.) 16 Q But the legislature has ultimate control 17 of funding, correct? 18 A Yes. The legislature has ultimate 19 control on funding with the -- but I would like to add 20 that the legislature is provided information by the 21 agencies in which they're funding and has to rely on 22 that information or does rely on that information. 23 MR. FORTENBERRY: Get this marked as 24 Exhibit 148. 25 (DOCUMENT MARKED AS DEPOSITION EXHIBIT</p>	<p style="text-align: right;">Page 72</p> <p>1 If he does not act as an advocate for those children, 2 then he is, in my opinion, not doing his job. 3 Q Okay. Would you take money away from the 4 schoolteachers to give to the Department of Family and 5 Children Services? 6 A That's not my call. It's -- 7 MR. LANG: Objection as to form. 8 MR. FORTENBERRY: (Continuing.) 9 Q Well, whose call is it? 10 A That would be the decision-makers, the 11 governor, the legislature, whoever is making decisions 12 on that level. 13 Q It would be the legislature's decision, 14 wouldn't it? 15 A It would be their ultimate decision. Of 16 course, the governor has power. He introduces budgets 17 to the legislature. He serves as advocate for his 18 budgets and he has veto power, so it's not entirely 19 the legislature. 20 Q Dr. Brister, I have one more exhibit for 21 you to look at here. 22 MR. FORTENBERRY: Exhibit 149. 23 (DOCUMENT MARKED AS DEPOSITION EXHIBIT 24 NO. 149 AND ATTACHED.) 25 A Okay.</p>
<p style="text-align: right;">Page 71</p> <p>1 NO. 148 AND ATTACHED.) 2 A Okay. 3 MR. FORTENBERRY: (Continuing.) 4 Q Dr. Brister, this Exhibit 148, as opposed 5 to social workers, addresses an automated child 6 welfare information system. And again, it's 7 conditioned upon funds being appropriated from the 8 legislature; isn't that true? 9 A And again, you're handing me -- 10 MR. LANG: Objection as to form. 11 Grounds previously stated. 12 A You're handing me copies of laws that are 13 taken in isolation. I don't know what is on each side 14 of this law or anything else. And I can't -- I can't 15 comment as to the legal structure of this. I am not 16 an expert in the legalities of this thing. 17 MR. FORTENBERRY: (Continuing.) 18 Q But throughout your report, you use the 19 term over and over underfunding or severe 20 underfunding, correct? 21 A Uh-huh. (Affirmative response.) I do. 22 Q What has Governor Barbour done to cause 23 the department to be underfunded? 24 A Governor Barbour is the -- has the role 25 to protect the children of the State of Mississippi.</p>	<p style="text-align: right;">Page 73</p> <p>1 MR. FORTENBERRY: (Continuing.) 2 Q Exhibit 149 refers to a Child Welfare 3 Enhancement Fund in the State of Mississippi to be 4 administered by the Department of Human Services. But 5 again, it's conditioned upon appropriations of monies 6 by the legislature; isn't that true? 7 MR. LANG: Objection as to form. 8 A And again, we're back to interpreting the 9 law. 10 MR. FORTENBERRY: (Continuing.) 11 Q Do you know whether the legislature has 12 ever funded this fund? 13 A I do not. 14 Q Have you ever attended a legislative 15 budget office hearing? 16 A Could I back up to that previous 17 question? 18 Q Sure. 19 A I do know -- it references the Child 20 Welfare League of America. I do know they're -- they 21 are one of the ones who recommend case load standards 22 that are not even close to being met by the State of 23 Mississippi. I do not know if that was ever funded by 24 the legislature, though. 25 Q But it would be the legislature's -- it</p>

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<p>1 is within the realm of the legislature to appropriate 2 money for this fund in order to meet those standards?</p> <p>3 MR. LANG: Objection.</p> <p>4 Argumentative.</p> <p>5 MR. FORTENBERRY: (Continuing.)</p> <p>6 Q Correct?</p> <p>7 A Again, with the information supplied to 8 them by the agencies and with the -- with the 9 influence of the governor.</p> <p>10 Q How do you think the legislature -- or 11 strike that.</p> <p>12 Do you have an opinion as to whether the 13 legislature learned of these standards by the Child 14 Welfare League of America?</p> <p>15 A Pardon me? Would you ask again?</p> <p>16 Q Who told the legislature of these CWLA 17 standards?</p> <p>18 A I don't know.</p> <p>19 Q Have you ever attended a legislative 20 budget office hearing?</p> <p>21 A I have.</p> <p>22 Q Now, when did you attend one?</p> <p>23 A Well, I've attended one -- not this 24 legislative -- it was not prior to this legislative 25 session, but the last one. And the -- I guess it was</p>	<p>1 understanding exactly what hearings you're talking 2 about. Although, again, I'm not that -- an expert in 3 the entire legislative process. There was a -- as I 4 understand it, there was perhaps a joint legislative 5 hearing which Don Taylor presented. The budget is the 6 beginning -- one of the beginning process steps in the 7 budgetary process. That's what I attended.</p> <p>8 Q Correct. And that's what I refer to as 9 an LBO hearing.</p> <p>10 A Okay.</p> <p>11 Q Do you remember who all served on that 12 committee, the members of the committee?</p> <p>13 A I couldn't name the legislators, no, sir.</p> <p>14 Q Do you remember which offices have had -- 15 or had a spot on that committee?</p> <p>16 A Which --</p> <p>17 Q Which public offices or officers?</p> <p>18 A I couldn't tell you the composition of 19 the committee.</p> <p>20 Q Are you aware that the lieutenant 21 governor is a member of that committee?</p> <p>22 A I -- I won't dispute that.</p> <p>23 Q Are you aware that the speaker of the 24 house of representatives is a member of that 25 committee?</p>
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<p>1 2005 legislative session. There was legislative 2 budget hearings prior to it. I attended that for a 3 while. And I attended some back in the '90s when I 4 was doing demonstration work for DHS.</p> <p>5 Q And which state agency hearings did you 6 attend?</p> <p>7 A DHS. But there were some others 8 presented, but I was there to hear DHS.</p> <p>9 Q And what was the purpose of your being 10 there?</p> <p>11 A To hear what was said.</p> <p>12 Q And what work were you doing that 13 required you -- required --</p> <p>14 A This work.</p> <p>15 Q Wait. That's what I'm not understanding. 16 Did you attend the -- well, let me back up. 17 Legislative budget office is often 18 referred to LBO, L-B-O.</p> <p>19 A Okay.</p> <p>20 Q Is it okay if I just use the term LBO?</p> <p>21 A You may.</p> <p>22 Q Okay. And I take it from your testimony 23 that you attended some LBO hearings involving the 24 Department of Human Services and possibly others?</p> <p>25 A You know -- and maybe I'm not</p>	<p>1 A I will not dispute that.</p> <p>2 Q Are you aware that the chairman of the 3 senate appropriations committee is a member of the LBO 4 committee?</p> <p>5 A Again, I do not know the composition, so 6 I would take your word for it.</p> <p>7 Q Are you aware that the chairman of 8 appropriations in the house of representatives is also 9 present and has a spot on that committee?</p> <p>10 A Again, I do not know the composition of 11 the committee.</p> <p>12 Q And I believe it was your testimony that 13 you were there in the '90s on behalf of the Department 14 of Human Services, or you -- had you been retained by 15 the department in any way?</p> <p>16 A I had been retained by the department.</p> <p>17 Q I'm sorry. You had --</p> <p>18 A I had been retained by that department.</p> <p>19 Q And in what capacity were you working for 20 the Department of Human Services?</p> <p>21 A In the demonstration -- in the evaluation 22 of the demonstration project in the Taniff reform.</p> <p>23 Q Okay. Tell me, what does that mean in 24 layman's terms?</p> <p>25 A Beginning around 19 -- I believe it was</p>

20 (Pages 74 to 77)

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<p style="text-align: right;">Page 78</p> <p>1 1995 or so, Mississippi was granted a waiver to 2 conduct an experiment in the State of Mississippi with 3 work based -- what was then called AFDC reforms, 4 welfare forms, cash payments, welfare payments. And 5 the -- it was a national movement, come to find out, 6 in those days to go to work-based reforms and time 7 limited receipts -- receipts of these benefits. To 8 get the waiver, they had to have an evaluator, 9 independent evaluator, and that was -- I served in 10 that capacity.</p> <p>11 Q And you used the determine AFDC. What is 12 that term?</p> <p>13 A Aide to Families with Dependent Children. 14 That term is not used anymore. It's since changed.</p> <p>15 Q Okay. And you used the phrase work-based 16 reforms or worked-base training.</p> <p>17 A Yes.</p> <p>18 Q What is that?</p> <p>19 A The AFDC is a cash payment to people who 20 meet certain income requirements. People in poverty 21 can receive cash payments if they don't have a certain 22 income level. That was AFDC. And children were 23 involved. They had -- children were usually involved 24 in these families. The -- prior to the reforms in the 25 mid '90s, there was no work requirement. In other</p>	<p style="text-align: right;">Page 80</p> <p>1 Q Well, was Mississippi successful? 2 A It's according to how you term success. 3 The welfare world certainly declined. Different 4 people had different views on if that was successful 5 or not.</p> <p>6 Q Did any of that work involve the 7 Department of Family and Children -- or excuse me, the 8 Division of Family and Children Services or foster 9 care?</p> <p>10 A It did not.</p> <p>11 MR. FORTENBERRY: We're at sort of a 12 break point. Let's take a couple-minute break.</p> <p>13 MR. LANG: Could we -- I'm going to 14 request that Dr. Brister just step out for a 15 moment. I want to make a statement on the 16 record --</p> <p>17 MR. FORTENBERRY: Sure. 18 MR. LANG: -- in his absence. 19 (Witness excused.)</p> <p>20 MR. LANG: Thank you. I appreciate 21 you giving me the courtesy. I wanted to make 22 this statement because there was something that 23 didn't seem to get on the record, but I don't 24 want to, in any way, suggest anything to the 25 witness, so I've asked that the witness step</p>
<p style="text-align: right;">Page 79</p> <p>1 words, the parents or the adults in the AFDC family 2 could receive the benefits without any particular work 3 requirements. And that we were experimenting -- the 4 state was experimenting with requiring searching for 5 work, at the very least, or in training program for 6 work or actually going to work.</p> <p>7 Q Do you know how the state was selected to 8 participate in this program?</p> <p>9 A I don't really. I'm sure there was a 10 proposal sent up from the state to the feds and was 11 accepted.</p> <p>12 Q And I believe you stated to the effect 13 that you were hired to conduct an independent 14 evaluation to determine if Mississippi complied?</p> <p>15 A And the outcomes.</p> <p>16 Q And what was the outcome?</p> <p>17 A Well, there were many, many outcomes. 18 This was a series of studies. It was a huge 19 experiment not only in Mississippi, but throughout the 20 nation. And approximately one year after the waiver, 21 the Congress of the United States and the President 22 signed that these similar reforms were national. 23 Outcomes were many. I mean, I don't know how much 24 detail you want me to go into that. I mean, it's a 25 very complex, very large experiment.</p>	<p style="text-align: right;">Page 81</p> <p>1 outside.</p> <p>2 On page -- according to this printout, I 3 have, on Page 54 of the transcript, which I 4 know you were tape-recording, he was talking 5 about the governor. And I thought, because I'm 6 standing inches away -- sitting -- that he said 7 something like the buck stops there. And my 8 colleague, John Piskora, who I asked to verify 9 to me that he thought he heard it, too.</p> <p>10 In the transcript, I didn't see it. So 11 what I would ask is that the reporter -- I'm 12 totally going by what you say, my hearing's not 13 great, anyway -- check the recording to see if 14 it's there. And I didn't want to be suggesting 15 to the witness that he use that term later on 16 in his testimony, so I asked him to stay out. 17 Thank you very much.</p> <p>18 (Off the record.)</p> <p>19 (DOCUMENT MARKED AS DEPOSITION EXHIBIT 20 NO. 150 AND ATTACHED.)</p> <p>21 MR. FORTENBERRY: (Continuing.)</p> <p>22 Q Dr. Brister, I handed to you what's been 23 marked as Exhibit No. 150, and ask that you flip 24 through that for a moment.</p> <p>25 A Okay. You don't want me to read the</p>

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<p>1 whole thing sitting right here or do you?</p> <p>2 Q No. It's -- has the DHS No. 115015</p> <p>3 through 115067.</p> <p>4 A Okay.</p> <p>5 Q Have you seen this before?</p> <p>6 A No, I don't believe I have.</p> <p>7 Q Have you -- so I take it you never saw it</p> <p>8 prior to your report being finalized?</p> <p>9 A I did not see it prior to the report.</p> <p>10 Q And you have not seen it after your</p> <p>11 report?</p> <p>12 A You know, I think it may be included in a</p> <p>13 package of material I got, but I have not read it.</p> <p>14 But I'm not sure it was in there, but I think it was,</p> <p>15 Very possibly in there.</p> <p>16 Q On Page 1, which is Bates numbered</p> <p>17 115015 --</p> <p>18 A Uh-huh. (Affirmative response.)</p> <p>19 Q -- it's identified as the Budget Request</p> <p>20 for Human Services, Fiscal Year 2000; is that correct?</p> <p>21 A That's right.</p> <p>22 Q And referring to Page 20 and 21, please.</p> <p>23 A (Witness complies.)</p> <p>24 Q I ask you that you look over those two</p> <p>25 pages.</p>	<p>1 A That's right. That's what it says.</p> <p>2 Q And they're also asking for an increase</p> <p>3 in travel money for social workers?</p> <p>4 A Correct.</p> <p>5 Q And Page 21 with reference to Colonel</p> <p>6 Taylor who is asking for an additional \$2.4 million to</p> <p>7 increase foster care payments?</p> <p>8 A "We're asking for 1.8 million." Is that</p> <p>9 what you're referring to, Line 14?</p> <p>10 Q Yes. I'm sorry. 1.8 million to increase</p> <p>11 foster care payments?</p> <p>12 A Right.</p> <p>13 Q And so that -- and then he states that</p> <p>14 the Family and Children Services accounts were roughly</p> <p>15 a \$2.4 million increase in the general funds?</p> <p>16 A That's what it says. That's all?</p> <p>17 Q Yeah.</p> <p>18 (DOCUMENT MARKED AS DEPOSITION EXHIBIT</p> <p>19 NO. 151 AND ATTACHED.)</p> <p>20 MR. FORTENBERRY: (Continuing.)</p> <p>21 Q On what's been marked as Exhibit No. 151,</p> <p>22 if you want to read the entire thing, but I direct</p> <p>23 your attention to Pages 15, 16, 17. Also, Page 14.</p> <p>24 MR. LANG: Mr. Fortenberry, may I</p> <p>25 make a suggestion? I know you're offering the</p>
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<p>1 A (Witness complies.)</p> <p>2 MR. LANG: Should the witness read</p> <p>3 those pages?</p> <p>4 MR. FORTENBERRY: Yes, please. Look</p> <p>5 over it or read.</p> <p>6 MR. LANG: I suggest that you go to</p> <p>7 a page earlier just to make sure you get the</p> <p>8 context.</p> <p>9 MR. FORTENBERRY: Or you want to</p> <p>10 take a moment and read the entire exhibit, that</p> <p>11 will be fine.</p> <p>12 A (Witness complies.) Okay.</p> <p>13 MR. FORTENBERRY: (Continuing.)</p> <p>14 Q On Page 20, does it indicate that Family</p> <p>15 and Children Services or the Department of Human</p> <p>16 Services is asking for an increase budget in the</p> <p>17 amount of \$4 million?</p> <p>18 A Well, Mr. Maddox says, "We have a net</p> <p>19 difference or increase of \$4 million." I'm not</p> <p>20 100 percent sure of what he is referring -- or</p> <p>21 Ms. Maddox is. I'm not sure what she's referring to.</p> <p>22 Okay.</p> <p>23 Q And also, asking for an increase of 51</p> <p>24 new positions and seven social worker positions being</p> <p>25 re-allocated to social worker advanced positions?</p>	<p>1 witness an opportunity to read the entire</p> <p>2 document. Perhaps you can do your questioning</p> <p>3 and he can reserve on reading it perhaps during</p> <p>4 the lunch break, and maybe take a little longer</p> <p>5 break. And then if he has anything, any</p> <p>6 comments based on that when we get back, he</p> <p>7 could -- he could perhaps be given an</p> <p>8 opportunity as opposed to his reading these</p> <p>9 entire exhibits now in response to your kind</p> <p>10 invitation.</p> <p>11 MR. FORTENBERRY: Sure.</p> <p>12 MR. FORTENBERRY: (Continuing.)</p> <p>13 Q And just so it's clear for the sake of</p> <p>14 going through this, I'll refer you to the specific</p> <p>15 pages. But if you want to read the entire exhibits at</p> <p>16 lunch and come back and offer any other comments,</p> <p>17 that's certainly fine.</p> <p>18 A Okay.</p> <p>19 Q Or if counsel wants to ask you any</p> <p>20 questions after I finish, then that's fine, also.</p> <p>21 A All right.</p> <p>22 Q Because I certainly don't want to have to</p> <p>23 ask you to sit here and read page after page that may</p> <p>24 not be pertinent.</p> <p>25 A It's something I really want to do over</p>

22 (Pages 82 to 85)

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<p>1 lunch. That's sounds like fun. 2 Q Sure. 3 A That was a joke. A bad joke, obviously, 4 but... 5 Q Referring to Pages 14 and 15 -- 6 A Yes. 7 Q -- do you see where the Division of 8 Family and Children Services is asking for an overall 9 increase in their budget over \$2 million? 10 A Refer me to the line, please. 11 Q I'm sorry. Beginning on Line 23 on Page 12 14 and going through on Page 15. 13 A Increase of \$2 million. Yeah. I don't 14 know if that's general fund, overall authority or 15 what, but yeah, it says that. 16 Q Okay. And then Page 15, Lines 2 through 17 6 -- 18 A Uh-huh. (Affirmative response.) 19 Q -- salary category, "We're asking for 20 increase of \$1,072,026 for the funding of 30 21 additional social worker positions." 22 A It says that. A drop in the bucket 23 what's needed, but it says that. One of those cases 24 where there's a standard in place of what they ought 25 to be asking for, but that's what it says. You're</p>	<p>1 Services annually goes over to the legislature or 2 meets with legislators? 3 A I don't how many. 4 Q Do you have an opinion as to what a 5 reasonable number of requests would be? 6 A A reasonable -- 7 Q Should an executive director go over to 8 the legislature every day and request the same thing? 9 What's a reasonable number of requests to the 10 legislature for additional social worker positions? 11 MR. LANG: Objection. A couple of 12 times you seem to be interrupting the witness. 13 Maybe not doing it deliberately, but I'd 14 appreciate it if you let him finish when he 15 speaks. 16 MR. FORTENBERRY: I apologize if I 17 interrupt. 18 A Your question again, please. 19 MR. FORTENBERRY: (Continuing.) 20 Q What is a reasonable number of times for 21 the executive director to go to the legislature to ask 22 for additional social workers? 23 A I can't give you a number of what is a 24 reasonable number of times you should go to the 25 legislature and ask. I think what is more reasonable</p>
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<p>1 right. 2 Q Okay. How many should they have asked 3 for? 4 A The agency has said we need to -- we more 5 than this just to get to the danger point. 6 Q And this is fiscal year 2001? 7 A Or four or five. It might have been a 8 later fiscal year, but the situation had not changed. 9 Q And the funding of those social worker 10 positions is up to the legislature, correct? 11 A Well, we've been through of that. Yes. 12 The legislature does the funding with advice and -- 13 from the governor and data from the agencies, and et 14 cetera, et cetera. 15 Q And if the legislature won't fund 30 16 positions, what makes you think they will fund 500 17 positions? 18 A Perhaps if the chronic nature, the danger 19 that the kids are in, the necessary and importance of 20 this were expressed here rather than saying we're 21 asking for an increase of million for 30 social 22 workers. It sounds great, but it doesn't say here 23 what we really need is 500 to keep these kids safe. 24 Q And are you aware of the number of times 25 the executive director from the Department of Human</p>	<p>1 is that you make the case of what is needed to protect 2 the children in a forceful manner whether it's once or 3 more than once. 4 Q Page 17, Lines 3 through 5. 5 A Yeah. Let me back up. 6 Q Sure. 7 A Okay. 8 Q Isn't it true on Page 17, Line 3 through 9 5 that the LBO committee is being told that DHS 10 is trying to lower -- "What we're trying to do is 11 lower the social worker case load down to acceptable 12 levels"? 13 A Well, the speaker is unidentified. I 14 don't know who's saying that. I assume it's not 15 Colonel Taylor because he is identified. So I don't 16 know who's saying that, but that is a -- again, sure 17 doesn't give information of -- in a forceful manner of 18 how many and why, and the danger level that is -- that 19 these kids are facing because of the lack of social 20 workers. 21 Q Do you have anything, to your knowledge, 22 to indicate that that information was not delivered to 23 any legislator or the legislature in a forceful 24 manner? 25 A I do not have information that it was</p>

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<p>1 not, nor that it was. 2 Q Now, continue on Page 17, Lines 10 3 through 17. 4 A Okay. Yeah. 5 Q Isn't it true that Colonel Taylor is 6 there giving notice to the legislature the growth on 7 the coast and the needs on the coastal area of 8 Mississippi? 9 A Yes. I would hope he would do that. He 10 says, "The number of cases of child abuse and neglect 11 has gone up." Almost exponentially you would hope he 12 would address that problem. 13 Q So he was advising the legislative budget 14 committee of that problem? 15 A He was. He didn't speak out as to how 16 many social workers we particularly need down there or 17 I don't see any particular funding directed down 18 there, but he did make that statement that there 19 was -- seems to be a problem. 20 Q On Page 15, we've already discussed 21 Lines 2 through 5. He did say there was a need for 30 22 additional social workers and the cost for those 23 social workers? 24 A He did say that. I assume that's 30 25 statewide. It's not directed at the coast, but -- and</p>	<p>1 factor it into is it important to my report or not. 2 (DOCUMENT MARKED AS DEPOSITION EXHIBIT 3 NO. 152 AND ATTACHED.) 4 MR. FORTENBERRY: (Continuing.) 5 Q I'll hand to you 152, which is FY2003. 6 And the same goes for all of these reports, 7 Dr. Brister. If you want to review them at lunch in 8 more detail, that's fine. 9 A Uh-huh. (Affirmative response.) 10 Q And I'll try to -- for the sake of 11 getting through this, I'll try to refer you to certain 12 particular pages. 13 In this case, Pages 3, 4, 5 and 6. 14 A Yes. Okay. 15 Q On Page 3, beginning Line 12 here -- Line 16 18. 17 A Line 18? 18 Q Lines 12 through 18 on Page 3. 19 A Okay. Okay. 20 Q At this time, Executive Director 21 Brooks -- I believe you may have -- I apologize. You 22 may have to go up to Page 2 to see it's Ms. Brooks 23 speaking. 24 A Yeah, uh-huh. (Affirmative response.) 25 Q Do you recall that Ms. Brooks was the</p>
<p>1 again, that's a drop in the bucket of what the reports 2 say is needed. 3 Q And again, you use the term drop in the 4 bucket of what is needed. What makes you think that 5 the legislature would fund 500 positions if they 6 wouldn't fund those 30 positions? 7 A I don't know what they would fund. 8 Q And do you have any information that 9 Colonel Taylor never or the executive director at that 10 time never asked or communicated the need to any 11 legislator or the committee chairman, appropriation 12 committee chairman? 13 A I do not know that he didn't nor that he 14 did. I have no evidence one way or another. I would 15 love to see it if there is that evidence. 16 Q Why would you love to see it? 17 A Well, it would be pertinent to my -- to 18 my report. 19 Q And in what way would it be pertinent to 20 your report? 21 A That Colonel Taylor asked for these 22 positions? 23 Q Uh-huh. (Affirmative response.) 24 A If -- I mean, I would take any 25 information that I've not had prior to the report and</p>	<p>1 executive director of the Department of Human Services 2 at that time? 3 A Yes. 4 Q And do you see here on Page 3 where she's 5 talking to the legislative budget committee about the 6 need for general funds in order to maximize federal 7 funds? 8 A Yes. 9 Q And she also communicates that any 10 reductions experienced in general funds results in a 11 direct reduction in federal funds? 12 A She says that. 13 Q And she's making the legislative budget 14 committee aware of that fact? 15 A She says that, yes, that's correct. 16 Q Page 5 beginning at Line 9 through 17 approximately Line 18. 18 A Okay. 19 Q Executive Director Brooks is also 20 pointing out that the need to restore funding to the 21 previous years? 22 A Right. 23 Q And she's also acknowledging the state is 24 undergoing a period of extreme shortfall of revenues? 25 A She states that.</p>

24 (Pages 90 to 93)

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<p style="text-align: right;">Page 94</p> <p>1 Q And then Page 6 -- going on to Page 6, 2 Lines 6 through 10. 3 A Uh-huh. (Affirmative response.) 4 Q Director Brooks is also pointing out the 5 decrease in funding to DHS in general fund dollars? 6 A Uh-huh. (Affirmative response.) 7 Q Yeah. I'm sorry. Verbalize yes or no, 8 please. 9 A Oh, yes. Yes, she is doing that. 10 Q Just for the sake of the record. 11 A I understand. 12 Q Referring to Pages 10 and 11. 13 A Pardon me. I'm going to go back and read 14 it a little bit. Okay? 15 Q Sure. Sure. 16 A Okay. I've read through Line 5 on 17 Page 11 where it shifts to youth services. Okay. 18 Q And do you see where Dr. Brooks is 19 notifying the legislature of the need of 39 social 20 worker positions to bring Mississippi closer to 21 nationally recognized standards? 22 A Right. 23 Q And do you see where she's indicating a 24 graph to show how far away Mississippi is from those 25 standards?</p>	<p style="text-align: right;">Page 96</p> <p>1 and death, which again, is not carrying the message 2 forward. Thirty-nine is -- does not scratch the 3 surface of this. 4 I also see in previous things here that 5 we talk about, for example, Page 8, Line 23, Division 6 of Family and Children, "This division has 7 historically overspent Child Welfare Services grant 8 and the FSBG contracts each year are roughly between 3 9 and \$4 million." She's talking about overspending. 10 That she goes on on Page -- on Line 9 -- on Page 9, 11 Line 10: "Division must use 100 percent general funds 12 to cover this overspending." 13 Line 15: "This 100 percent general funds 14 reduces our division's ability to match its other 15 grants." Line 21: "In prior years, funds had to be 16 returned to the federal government because of lack of 17 matching dollars." 18 So, you know, she -- yeah, she points out 19 some of the mismanagement in the agency and -- and 20 then requests 39 social workers to cure a problem that 21 is a matter of life and death. 22 Q How is it mismanagement in not obtaining 23 enough federal funds because the legislature did not 24 appropriate general fund money? 25 A You have to -- I mean, that's one of</p>
<p style="text-align: right;">Page 95</p> <p>1 A I do. 2 Q And do you see where she notified the 3 legislative budget committee that the case load should 4 range anywhere up to 15 cases? 5 A Yes. 6 Q And she notified the legislative budget 7 office that our case load was about 40? 8 A Yes. 9 Q And she also notified the legislative of 10 problems in the coastal counties of Jackson, Hancock 11 and Harrison Counties? 12 A Uh-huh. (Affirmative response.) 13 Q That the coastal counties' workers are 14 buried in case loads of up to 100 cases each? 15 A Yes. 16 Q And that the Department of Human Services 17 is in a compromised position of not being able to 18 adequately respond to the needs of children and 19 families? 20 A Yes. 21 Q Do you see where she notifies the 22 legislative budget office or committee that this is a 23 matter of potential life and death? 24 A I do. And I also see that she requested 25 39 social worker positions to cure a situation of life</p>	<p style="text-align: right;">Page 97</p> <p>1 those principals we were talking about earlier. You 2 have to -- you should maximize your federal funds. 3 This is all coming about -- you've got to back up down 4 the line. This is all coming about because of the low 5 penetration rate in 4E. We're not -- the agency is 6 not doing the job of establishing eligibility for 4E 7 funds in foster care and adoption assistance. 8 Well, that means the federal government 9 doesn't pay for those, so -- in the 4E funds, so the 10 funds get shifted to Child Welfare Services, which is 11 the capped funds. Well, they -- she admits here 12 that's overspent by 3 or \$4 million, which then has to 13 be paid by state general funds that should be used to 14 match. 15 So it all goes all the way back to a 16 mismanagement and in large part because of they're not 17 doing the job of establishing 4E eligibility. So I 18 mean, there's a, you know, cause and effect all the 19 way through the system here. 20 Q And that cause and effect is based on a 21 severe underfunding, correct? 22 A Oh, that's part of it, yes. 23 Q Okay. Is it your position that federal 24 funds are unlimited? 25 A Well, there is unlimited -- there are the</p>

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<p>1 uncapped sources. As long as you can establish 2 eligibility for the children and the children need the 3 funds and you establish eligibility, the federal 4 government will pay a match, anyway. Won't pay the 5 full cost.</p> <p>6 Q Right. But that's not an unlimited 7 supply of federal money, is it?</p> <p>8 A Well, it's uncapped. I mean, unlimited, 9 you can't just say send us money forever. You've got 10 to establish eligibility. But it's unlimited to the 11 extent that you can -- the children are in need and 12 you can establish eligibility. They'll pay their 13 share.</p> <p>14 Q But it's directly related to availability 15 of general funds, is it not?</p> <p>16 A Matching funds and the penetration rate.</p> <p>17 Q So are you saying the state should take 18 every penny that it has and put it into the general 19 fund budget for the Department of Division of 20 Family and Children Services?</p> <p>21 A No.</p> <p>22 Q Why not?</p> <p>23 A Well, because decisions have to be made, 24 but they can certainly do better. They can do --</p> <p>25 Q Well, what are those decisions --</p>	<p>1 A Again, it's not my call. That's the call 2 of the elected officials to decide -- to decide that. 3 And, you know, perhaps.</p> <p>4 Q Do you consider it unreasonable if they 5 decide not to do that?</p> <p>6 A I consider it unreasonable to allow 7 children to be in danger. In the words of the 8 director here, "a matter of life and death." Yes, I 9 think it's responsible behavior to -- to address 10 matters of life and death in an immediate emergency 11 sense.</p> <p>12 Q So it's certainly reasonable for the 13 director to express to the legislative body that it 14 was a matter of life and death, correct? That was a 15 reasonable act by the director to express that to the 16 legislature?</p> <p>17 A Yes, it was, uh-huh. (Affirmative 18 response.)</p> <p>19 Q With respect to this fiscal year we 20 talked about, we touched on her request for 39 21 additional social worker positions on Page 10.</p> <p>22 A Yes.</p> <p>23 Q Do you know whether the legislature even 24 funded those positions?</p> <p>25 A I can tell you if the amount of money for</p>
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<p>1 A I mean, there's -- to me -- we were 2 talking about other principals or standards of 3 professional behavior. I mean, one in this case is 4 you maximize your amount of federal funds. To me, if 5 you can -- you know, you can spend X amount of money 6 over here and get two or three times that over here 7 from the federal government, that seems to be a 8 reasonable thing to do.</p> <p>9 Q But wouldn't you agree --</p> <p>10 A And should be -- you should try to 11 maximize the amount of federal funds.</p> <p>12 Q You should try to, correct?</p> <p>13 A Absolutely.</p> <p>14 Q If there are federal funds still 15 available for foster children -- you mentioned that 16 decisions have to be made, but if there are federal 17 funds available for foster children, should the 18 legislature automatically take money from the 19 Department of Education to go get matching federal 20 funds for foster children?</p> <p>21 A That's not my call. I mean, that's up to 22 the legislature. If -- perhaps.</p> <p>23 Q Should they take money away from the 24 Highway Patrol to get matching money for foster 25 children?</p>	<p>1 salaries and personnel expenses increased or not. I 2 can't, off the top of my head, tell you if those 3 particularly positions were funded or not.</p> <p>4 (DOCUMENT MARKED AS DEPOSITION EXHIBIT 5 NO. 153 AND ATTACHED.)</p> <p>6 MR. FORTENBERRY: (Continuing.)</p> <p>7 Q Dr. Brister, just for the sake of speed, 8 I'll be focusing primarily on Pages 5 through 8, 13 9 through 15.</p> <p>10 A Okay.</p> <p>11 Q And 30 and 39.</p> <p>12 A I'm sorry. What page again? I was 13 reading something.</p> <p>14 Q Pages 5 through 8.</p> <p>15 A Okay.</p> <p>16 Q Thirteen through 15.</p> <p>17 A Okay.</p> <p>18 Q Pages 30 and 39.</p> <p>19 A Five through eight. Let me start with 20 those.</p> <p>21 Q I'm sorry. We're referring to Exhibit 22 No. 153.</p> <p>23 A Okay. Five through eight, I've read if 24 you want to -- do you want me to read those other 25 sections?</p>

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<p>1 Q Whichever you prefer. 2 A Let's -- we can talk about this. 3 Q Why don't you go ahead and read the 4 others and -- 5 A Okay. Five through -- and what were the 6 others again? 7 Q Thirteen through 15. 8 A All right. Okay. Thirteen through 15. 9 And what was the other? 10 Q Thirty and 39. 11 A Thirty and 39. Okay. 12 Q Going back to the beginning on Page 5 13 approximately Lines 11 through 14, isn't it 14 communicated to the LBO committee a recognition that 15 the state has not had sufficient general fund dollar 16 appropriations for childcare? 17 A Childcare. I don't think that's the same 18 thing as what we've been talking about. It's a 19 different deal. 20 Q But it's communicating the lack of 21 general fund appropriations? 22 A For childcare. 23 Q And on Page 7, Lines roughly 8 through 24 18, isn't it communicated to the committee again that 25 this is an effort for Family and Children Services</p>	<p>1 offering an opinion as to that program? 2 A I don't have an opinion on that program. 3 Q And continuing to the top of Page 8 at 4 Lines 1 and 2. 5 A Yes. 6 Q Again, the committee's informed that we 7 are at a critical situation relative to the number of 8 social workers? 9 A Yes. It says they're going to be 10 experiencing a refute of the childcare welfare 11 program. Doesn't say child welfare program. Continue 12 on that sentence. Okay. 13 Q Page 13, Lines 12 through 19 roughly. 14 A Okay. Lines what? 15 Q Beginning at Line 12. 16 A Yes. 17 Q Again, communicating to the committee 18 that the agency has been underfunded over the years. 19 And the impact of the underfunding on increase case 20 loads, that's communicated to the committee, correct? 21 A Well, let's see here. It's says in 22 Line 7, "Our Taniff case loads have increased and our 23 food stamp case loads have increased." And under -- 24 and I'm not sure -- I guess the case loads in Line 17 25 are referring to food stamps and Taniff case loads. I</p>
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<p>1 Division to increase the number of trained social 2 workers available? 3 A Line 8 says, "Our Family and Children 4 Services Division is negotiating our typing program 5 with the state's public universities and this is 6 in" -- okay. Well, I guess you could call that 7 addressing the problem if you want to, I suppose. 8 Q Lines 8 through 17. 9 A Eight through 17, yeah, uh-huh. 10 (Affirmative response.) "And this is our effort to 11 increase the number of trained social workers -- 12 Q Available? 13 A -- available." "Is negotiating a typing 14 program in the state's public universities." Okay. 15 Is that -- if that's addressing the problem, okay. 16 Q Are you familiar with the program? 17 A I'm -- I'm not familiar with the program. 18 Q Okay. Are you -- 19 A But it doesn't say we need, you know, a 20 bunch of the social workers. 21 Q Are you offering an opinion as to that 22 program? 23 A Actually, what I said is, if that 24 addresses the problem, that's -- that's okay. 25 Q Okay. And my question is, are you</p>	<p>1 don't see where it says -- it's not referring to 2 those. But yes, it does -- I guess that's in 3 reference to food stamp case loads. 4 Q Page 15, Line 16 through 22. 5 A Yes. Page 15 through 22? 6 Q Fifteen, Lines 16 through 22. 7 A Okay. Yes, uh-huh. (Affirmative 8 response.) Yeah, uh-huh. (Affirmative response.) 9 Yes, sir. 10 Q It's communicated that Family and 11 Children Services is working diligently to recruit 12 additional social workers? 13 A And have hired 36. And I'm continuing 14 the sentence. "And since May, we have hired 36 15 additional social workers." 16 Q Page 30, Lines 7 through 13. 17 A Yes, sir. 18 Q It's communicated that the Family and 19 Children Services is asking for an additional or needs 20 an additional \$2.7 million? 21 A I assume dollars, yes. And then 22 continues on, "We're asking" -- yes, sir -- "for \$2.7 23 million over our request for a total of \$97 million 24 for the agency in general fund dollars for state 25 fiscal year '04." So yes, she goes on to talk about</p>

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<p>1 the overall agency.</p> <p>2 (DOCUMENT MARKED AS DEPOSITION EXHIBIT</p> <p>3 NO. 154 AND ATTACHED.)</p> <p>4 MR. FORTENBERRY: (Continuing.)</p> <p>5 Q Dr. Brister, I'll hand you what's marked</p> <p>6 Exhibit 154, in particular Pages 7, 8 and 9.</p> <p>7 A All right.</p> <p>8 Q Executive Director Brittain is</p> <p>9 communicating to the legislative budget committee that</p> <p>10 funding of the Division of Family and Children</p> <p>11 Services has been inadequate, and historically, that</p> <p>12 division has been severely underfunded.</p> <p>13 A The Division of Family and Children has</p> <p>14 been historically severely underfunded. Yes, there is</p> <p>15 a -- from the executive director of the Department of</p> <p>16 Human Services saying that this division has</p> <p>17 historically been severely underfunded.</p> <p>18 Q By the legislature?</p> <p>19 A Well, it doesn't say that. It just says</p> <p>20 severely underfunded. I'm reading from the</p> <p>21 transcript.</p> <p>22 Q But we've established earlier in your</p> <p>23 testimony that the legislature is responsible for</p> <p>24 funding?</p> <p>25 A Again, yes --</p>	<p>1 Q Page 3, Page 11 and Page 15.</p> <p>2 A Okay. Eleven and 15. Page 3, Line 11?</p> <p>3 Q No. I'm sorry. Page 3, Page 11 and</p> <p>4 Page 15.</p> <p>5 A Okay. Okay. All right. And Page 11.</p> <p>6 Okay. I did three, now I'm going to Page 11.</p> <p>7 Q And also, it may start at the bottom of</p> <p>8 Page 10. I apologize.</p> <p>9 A Okay. All right. Page 11. And what was</p> <p>10 the other page, sir?</p> <p>11 Q Fifteen.</p> <p>12 A Fifteen. Okay. Yes, sir, I'm through</p> <p>13 reading.</p> <p>14 Q Page 3, is it true that Colonel Taylor is</p> <p>15 informing the budget committee about losing social</p> <p>16 workers faster than they can be hired?</p> <p>17 A That's what it says.</p> <p>18 Q And that 56 social workers have been</p> <p>19 lost, yet, only 30 hired for a net loss of 26?</p> <p>20 A That's what it says. On Page 2 it</p> <p>21 says -- Line 11, "We have a performance improvement</p> <p>22 plan in Family and Children Services. We have two</p> <p>23 years to make improvements coming down from the</p> <p>24 federal government." I assume that's saying they</p> <p>25 didn't meet certain standards that the federal</p>
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<p>1 MR. LANG: Objection as to form.</p> <p>2 A -- with the input from the governor and</p> <p>3 the agencies. And it continues on saying, "The</p> <p>4 division must provide court ordered services that</p> <p>5 consistently exceed Child Welfare Services' grant by</p> <p>6 three million a year and the Social Security Services'</p> <p>7 block grant by approximately three million each year.</p> <p>8 This reduces the division's general funds, which must</p> <p>9 be used to cover these expenditures. This reduces</p> <p>10 the" -- excuse me -- "the division's ability to fully</p> <p>11 match other federal grants." Okay.</p> <p>12 MR. FORTENBERRY: (Continuing.)</p> <p>13 Q So, again, it's being pointed out to the</p> <p>14 legislature that the lack of general fund dollars</p> <p>15 reduces the division's ability to match or obtain</p> <p>16 other federal funds, correct?</p> <p>17 A It does.</p> <p>18 (DOCUMENT MARKED AS DEPOSITION EXHIBIT</p> <p>19 NO. 155 AND ATTACHED.)</p> <p>20 MR. FORTENBERRY: (Continuing.)</p> <p>21 Q We'll be referring to Exhibit 155.</p> <p>22 Dr. Brister, to speed things up, again, you're</p> <p>23 certainly welcome to read everything at the break and</p> <p>24 we'll go back into it. But Pages 3, 11 and 15.</p> <p>25 A Okay. I'm sorry. I was --</p>	<p>1 government put in place for them.</p> <p>2 It says -- he continues to say, "We have</p> <p>3 two years to make improvements. If we fail to make</p> <p>4 those improvements, we're facing sanctions up to</p> <p>5 \$1 million per year." He goes on to say, "We have</p> <p>6 lawsuits against us." Okay. And -- all right. Now,</p> <p>7 we did Page 3. What's next, sir?</p> <p>8 Q Are you familiar with the performance</p> <p>9 improvement plan?</p> <p>10 A I know what it's about.</p> <p>11 Q What's it about?</p> <p>12 A It's a -- it's a federal governments --</p> <p>13 again, I'm not an expert in the improvement plan, but</p> <p>14 it's the federal government came in here and did a</p> <p>15 survey of some sort and identified several areas of</p> <p>16 weaknesses, and asked the state to provide a plan to</p> <p>17 improve things or else face these sanctions.</p> <p>18 Q Have any states passed the requirements</p> <p>19 of the performance improvement plan?</p> <p>20 A I'm not an expert in the improvement</p> <p>21 plan.</p> <p>22 Q But do you know whether any states have</p> <p>23 completely passed those requirements?</p> <p>24 A I don't know if they have or they</p> <p>25 haven't.</p>

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<p style="text-align: right;">Page 110</p> <p>1 Q Okay. Bottom of Page 10, Line 24 2 continuing through Page 11, Line 2. 3 A Yes. 4 Q It's communicated to the legislative 5 budget committee again that "We need social workers 6 desperately all over the state." Is that true? 7 A You know, it says here we have lawsuits 8 and we have the PIP thing that I just referred to, so 9 we need social workers desperately all over the state. 10 The sounds reactive, not proactive. 11 Q Are you aware that the state did not have 12 legislative budget hearings for fiscal year 2007 as a 13 result of Hurricane Katrina? 14 A I think I heard that. I haven't seen a 15 document or anything, but somehow I knew that. 16 Q Do you agree that Hurricane Katrina was 17 the greatest natural disaster to impact the state or 18 that the state ever faced? 19 A Yes, sir. 20 Q It's put a definite squeeze on the 21 state's budget, correct? 22 A I think the jury's still out somewhat. 23 Q You've used the term that it's put a 24 squeeze on the state budget. 25 A Yeah. I thought it would. Are you</p>	<p style="text-align: right;">Page 112</p> <p>1 BY THE WITNESS: It's -- 2 MR. FORTENBERRY: (Continuing.) 3 Q Go ahead and read it. 4 A It's the Metro Business Chronicle, Volume 5 1, No. 11-12, September/October 2005. 6 Yeah. Are you ready for my response? 7 Q Sure. 8 A Yes, I said that it -- "I don't see any 9 way around the squeeze on the state budget." Earlier, 10 I referred to -- well, the questioner asked, "While 11 the storm destroyed a lot of wealth, it will also 12 result in a big increase in economic activity and 13 transactions as the coast is rebuilt." And I answer, 14 "Right. While the loss of wealth is a hit to assets 15 on America's balance sheet, the GDP is an income 16 statement type figure focused on activity and new 17 production." 18 So it may, in the long run, turn out that 19 it's not as big a squeeze as I might have thought. 20 Q But there's a definite squeeze on the 21 state budget? 22 A You know, I don't know. I haven't seen 23 the numbers on the state funding since Katrina, to 24 tell you the truth. I mean, there's a lot of federal 25 money coming in and a lot of private money coming in,</p>
<p style="text-align: right;">Page 111</p> <p>1 referring to a newspaper article? 2 Q Right. 3 A I think I was forecasting there and at 4 that time, I thought it probably would, but -- 5 Q Has that opinion changed? 6 A -- it seems that the -- can I see the 7 article? 8 Q Sure. 9 A No. The opinion hadn't -- that it 10 certainly could put a squeeze on the budget. I think 11 maybe... 12 MR. FORTENBERRY: Excuse me. Off 13 the record a second. 14 (Off the record.) 15 MR. FORTENBERRY: (Continuing.) 16 Q This will be Exhibit 156 and we can 17 substitute a clean copy for it, but on the second page 18 of Exhibit 156 you state, "I don't see any way around 19 the squeeze on the state budget." That's what I'm 20 referring to. 21 (DOCUMENT MARKED AS DEPOSITION EXHIBIT 22 NO. 156 AND ATTACHED.) 23 MR. PISKORA: Since we only have one 24 copy, can we just get on the record what 25 newspaper this is and the date?</p>	<p style="text-align: right;">Page 113</p> <p>1 a lot of charitable contributions coming in. I really 2 don't know if it's putting a squeeze on the state 3 budget or not. 4 Q Well, had you seen those numbers when you 5 made that statement? 6 A I had not. I had not. It was sort of a 7 guess what might happen. 8 MR. FORTENBERRY: Okay. Why don't 9 we take a lunch break. It's 12:05. 10 (Off the record.) 11 MR. LANG: I just want to note in 12 connection with my objection to the questioning 13 of Dr. Brister on the -- these very extensive 14 transcripts for several years of appearances by 15 state officials before the state legislature, 16 that it is my understanding that we asked that 17 the plaintiffs, in their third request for 18 production of documents dated February 2nd, 19 2005, over a year ago, in Request No. 6, 20 specifically called for the production of all 21 transcripts and testimony of legislative 22 hearings. 23 We followed up on August 5th, 2005 in a 24 letter from Mr. Piskora, who is here today, to 25 Betty Melay specifically requesting transcripts</p>

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<p>1 of the joint legislature budget hearings. On 2 February 7th, 2006, over a year after our third 3 request for production of documents in which we 4 asked for these items, Dr. Brister made his 5 report.</p> <p>6 It was only on March 10th, which is 7 really just a few days ago, that these 8 documents were finally produced to us. The -- 9 Dr. Brister has not had an opportunity, 10 although, he was somewhat vague on in his 11 answers and thought he might have gotten them 12 from us some time ago, but we didn't have 13 them -- we didn't send them to him because we 14 didn't have them, and he had not had an 15 opportunity before today to look at these 16 documents.</p> <p>17 We appreciate the opportunity that you 18 have given to Dr. Brister to look at these 19 items, exhibits so far marked 150 through 155, 20 each of which constitutes a transcript. And 21 however, even with the extended lunch you 22 afforded us, Dr. Brister has only been able to 23 go through, I believe, two years rather 24 quickly. And if you would be as kind, I 25 believe he did want to make some comments now</p>	<p>1 MR. LANG: Excuse me. Can we go off 2 the record for one minute? 3 (Off the record.) 4 MR. LANG: And just so we note, I 5 don't think it was intentional, but Exhibits 6 150 through 155, there may be handwritten notes 7 or pencil notations on these exhibits. Now, 8 Dr. Brister, those are your notes or notations?</p> <p>9 BY THE WITNESS: Yes, they are. 10 MR. LANG: Okay. Just for the 11 record.</p> <p>12 BY THE WITNESS: Yes. 13 MR. LANG: Okay. 14 BY THE WITNESS: Well, may I make 15 that very brief statement that -- 16 MR. FORTENBERRY: I would like to 17 continue my questioning and then if counsel 18 wants to ask you questions to clarify anything, 19 I would agree to that. 20 MR. LANG: All right. Just for the 21 record, I had asked for the opportunity for 22 Dr. Brister to respond on two of the 23 transcripts that he has had an opportunity. If 24 you'd rather not do that now, then it's your 25 deposition and we would then ask to reserve</p>
<p>1 that he's had -- had the opportunity to read 2 the entire transcript for those two years over 3 and above the selection which you directed his 4 attention to.</p> <p>5 Now, I will note that at the time that 6 you asked him the questions, you did give him 7 the opportunity, if he wished, to read the 8 entire transcript, and that I declined that 9 opportunity and suggested that it would be more 10 efficient for him to look at it during the 11 lunch hour. So I'm not, in any way, suggesting 12 that you ever denied him an opportunity to read 13 the whole transcript at the time that you asked 14 him the question. Thank you.</p> <p>15 MR. FORTENBERRY: Okay. And should 16 we need to, I will file an appropriate response 17 with the times that these were requested and 18 the times they were received by this law firm, 19 and the times they were produced and so forth. 20 But I do not feel that's necessary at this 21 point, just as we have received documents from 22 the plaintiffs with respect to Dr. Brister's 23 deposition within the last three or four days, 24 and I have not had opportunity to read those 25 documents.</p>	<p>1 some time at the end of the deposition so that 2 I can give him an opportunity to respond more 3 fully to your earlier questions. 4 MR. FORTENBERRY: (Continuing.) 5 Q Go ahead and -- for everybody's 6 convenience, Dr. Brister, which two exhibits are we 7 referring to? 8 A I believe it's 155 and 154 -- 9 Q Okay. 10 A -- are the transcripts that I had -- 11 Q 155 being fiscal year 2006, and 154 being 12 the fiscal 2005. What comments would you like to add? 13 A Just very briefly, after reading through 14 both of those transcripts, I saw no requests for the 15 number of social workers that would be needed to bring 16 the case load down in Mississippi to the standards set 17 forth by the -- I think it's the National Association 18 of Child Welfare -- National Association of Child 19 Welfare America, something like that. 20 And nowhere in these or other documents 21 have I seen a request for funding that would be 22 adequate to hire the necessary number of social 23 workers to bring it down to the national standards. 24 And, in fact, it's an example of where budgeting 25 standards -- accepted budgeting standards has not</p>

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<p style="text-align: right;">Page 118</p> <p>1 really been met, because it is my opinion that an 2 accepted budgeting methodology would be to bring 3 forward the requests by the agency, especially the 4 agency in the line to -- that is -- the request for 5 funding and social workers in this case to do their 6 job to protect the children. And I did not see that 7 in here, and it seems to me, that would be proper 8 budgeting procedure.</p> <p>9 Q And where are those budgeting procedures 10 documented so that I may review them?</p> <p>11 A It's -- it's documented in generally 12 accepted budgeting procedures. I cannot give you a 13 reference where you go to it, but it is generally 14 accepted in the industry -- in the finance industry 15 that budgeting should be a process where the 16 decision-makers understand what is needed. They 17 understand the resources that are needed to fulfill 18 the mission of the agency that is requesting the 19 funding, and that the information given to them should 20 be truthful and complete.</p> <p>21 Q Are you saying anywhere in here that any 22 of the executive directors were not truthful with the 23 legislative budget?</p> <p>24 A Incomplete.</p> <p>25 Q Did you ever -- have you ever talked to</p>	<p style="text-align: right;">Page 120</p> <p>1 obvious we have a deposition procedure for 2 talking to people from the state.</p> <p>3 MR. FORTENBERRY: Simple question. 4 Did he request to talk to the budget leaders of 5 the state.</p> <p>6 MR. LANG: Objection.</p> <p>7 A I don't recall requesting that. I assume 8 that would not be -- that would not happen even if I 9 requested it.</p> <p>10 MR. FORTENBERRY: (Continuing.)</p> <p>11 Q Dr. Brister, this morning you used the 12 terms that Governor Barbour is supposed to protect the 13 interest of the children of Mississippi or something 14 to that effect. Can you tell me the details or duties 15 that he should have specifically done in order to 16 satisfy your minimum professional standards? Detail 17 what Governor Barbour should have done to satisfy your 18 minimum professional standards.</p> <p>19 MR. LANG: Excuse me. Can we read 20 back the entire question?</p> <p>21 MR. FORTENBERRY: Sure. (Whereupon, the question was read back by the court reporter.)</p> <p>24 A The information that the extremely large 25 case load in any, in fact, most counties in</p>
<p style="text-align: right;">Page 119</p> <p>1 the chairman of the senate appropriation committee?</p> <p>2 A I have not.</p> <p>3 Q Have you ever interviewed the chairman of 4 the house appropriations committee?</p> <p>5 A I have not.</p> <p>6 Q Have you ever interviewed the state 7 senator or representative in charge of the Department 8 of Human Services budgets?</p> <p>9 A I have not.</p> <p>10 MR. LANG: Objection as to asked and 11 answered. It's repeating your earlier line of 12 questioning.</p> <p>13 MR. FORTENBERRY: (Continuing.)</p> <p>14 Q Dr. Brister, would that not have been 15 necessary to determine whether they had sufficient 16 information in which to determine funding?</p> <p>17 A I felt it was -- would be improper in a 18 litigation environment to make those calls.</p> <p>19 Q In what way would it be improper?</p> <p>20 A Well, I would assume you would have 21 wanted me to run it by counsel on both sides before I 22 would make calls of that sort.</p> <p>23 Q To use your terms, did you run that by 24 counsel for CRI?</p> <p>25 MR. LANG: I object. I mean, it's</p>	<p style="text-align: right;">Page 121</p> <p>1 Mississippi left the children of Mississippi in a very 2 dangerous situation. That theme has been repeated 3 numerous times. Even today we have seen it stated by 4 people at DHS and, in fact, in documents not yet 5 discussed in here, budgetary documents that 6 information is made known.</p> <p>7 Did that information then go from the 8 executive director of DHS to Governor Barbour? I 9 don't know. I saw that it was not in the document -- 10 that it was in the document that came from DFCS to 11 DHS, and then it was omitted from the document that 12 came out of DHS. Was Governor Barbour informed 13 informally verbally? I don't know. He should have 14 been.</p> <p>15 So I can't say what Governor Barbour 16 should have done or should not have done; however, had 17 he known this information, he should have made it 18 clear and forcefully clear that this is a situation 19 that needs immediate remedy and expressed that in -- 20 in quantified terms.</p> <p>21 MR. FORTENBERRY: (Continuing.)</p> <p>22 Q Same question as to Don Taylor: What 23 should he have done to satisfy your minimum 24 professional standards?</p> <p>25 A Don Taylor, again, I don't know what he</p>

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<p style="text-align: center;">Page 122</p> <p>1 knew or didn't know. I saw the information in a 2 document that went from the division to -- to the DHS 3 level. It was omitted. Mr. Bledst testified at his 4 deposition that someone above his pay grade omitted 5 that information when it went up the ladder. I 6 don't know who did that. 7 If it -- but I -- again, I don't know 8 what Don Taylor knew or didn't know, but I assume he 9 saw that and at some point up there, was in on the 10 decision to admit that as it goes forward to the 11 governor and to the legislature. He should not have 12 done that. He should have made it abundantly clear 13 what were the needs and what were the dangers. 14 Q And if the needs or dangers were made 15 clear to the legislature, then he would have acted 16 reasonably, correct? 17 A If he would have done it in a manner that 18 was consistent with the urgency of the situation. 19 Q And you've seen budgetary transcripts 20 this morning in which one executive director 21 communicated that it was a matter of life and death, 22 didn't you? 23 A Yes, but it did not then request what was 24 needed to solve the situation. 25 Q And if the legislature wouldn't fund the</p>	<p style="text-align: center;">Page 124</p> <p>1 division head. But could have, in fact, been a more 2 forceful advocate. 3 Q What could any one of these three 4 defendants done to have made it more forceful, in your 5 opinion? 6 A In these budget hearings, they could have 7 said we need 500 social workers, give or take, 8 whatever the right number is, to bring it down to 9 nationally accepted case load standards. We need X 10 amount of funding to do that. Short of this, these 11 children are in danger. While they could have, in 12 fact, made changes even within the agency as far as 13 penetration rates, as far as establishing eligibility 14 for children to draw down funds, that would have 15 helped some. 16 So there's some changes within the 17 organization, but mainly in -- what I'm talking about 18 here is in communication with the decision-makers 19 higher up to portray the sense of urgency and the 20 sense of importance that was, indeed, the case. 21 Q So are you saying if it had been 22 communicated more urgently, in your opinion, then it 23 would have been reasonable, that would have satisfied 24 your minimum standards? 25 A Yes, in that regard. There's others.</p>
<p style="text-align: center;">Page 123</p> <p>1 30 positions that were requested, why do you think 2 they would have funded 500 positions? 3 MR. LANG: Objection as repetitive 4 and argumentative. 5 A I don't know what the legislature would 6 have funded. It is reasonable to think that they 7 might have funded many more positions had they been 8 cognizant of the dangers that were involved. 9 MR. FORTENBERRY: (Continuing.) 10 Q You used the term it's reasonably 11 expected that they would have funded. You're making 12 the assumption that -- I don't understand that. What 13 do you mean by that? 14 A I mean, I don't know what the legislature 15 would have done had they had this information, but at 16 least they would have had the information and we could 17 have gone from there. 18 Q Same question: What specifically should 19 Ricky Felder or the division director of DFCS should 20 have done to satisfy your minimum professional 21 standards? 22 A Again, made known, which in some 23 documents I've seen, it was made known. So I'm not 24 going to state that he did not -- did not pass it on, 25 because I think that it was passed on from the</p>	<p style="text-align: center;">Page 125</p> <p>1 MR. LANG: Objection as to form. 2 MR. FORTENBERRY: (Continuing.) 3 Q The reasonable minimum standards that 4 we've been talking about today and we keep referring 5 over and over, has anyone ever evaluated those 6 standards, to your knowledge? 7 A Those -- evaluated those standards? 8 Q Yes. 9 A I mean, they're standards of practice 10 that are well-documented in financial management, in 11 budgeting -- budgeting practices where you -- you 12 asked for the needs of the agency, you develop a 13 budget that fulfills those needs, you present that 14 budget in a -- in a manner that is complete. You -- 15 and you do not present a budget with numbers perhaps 16 that is in -- no way could come true and knowingly 17 they could not come true. 18 Q And where are these standards quantified 19 in a written form that I can look at? 20 A I cannot give you that source. They're 21 generally accepted principals in budgeting and in 22 financial management. They're just -- just general 23 practices that -- and principals that should be 24 adhered to. 25 Q To your knowledge, has anybody ever</p>

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<p>1 debated the reasonableness of those standards?</p> <p>2 A The standards have been -- have been in 3 practice -- in practice and have become standard 4 practice because of their reasonableness.</p> <p>5 Q And Dr. Brister, that's where I struggle 6 with. How -- but then there's nowhere I can go to 7 find these standards in writing?</p> <p>8 A Well, I'm sure there are papers and books 9 that I can't, off the top of my head, quote to you 10 that go through a budgeting process, and how one would 11 communicate that budgeting process. I'm sure they're 12 in both public finance and corporate finance. 13 Certainly, you don't go forward with inflated numbers 14 or leave out critical pieces of information.</p> <p>15 Q Have you ever written any articles 16 regarding the management of a foster care system or 17 human services agency?</p> <p>18 A No, sir.</p> <p>19 MR. LANG: Objection as repetitive.</p> <p>20 MR. FORTENBERRY: (Continuing.)</p> <p>21 Q Although you may dispute the numbers as 22 I'm sure from the LBO transcripts that the DHS 23 executive director asked for additional funding for 24 social workers over the last four or five years?</p> <p>25 A He did ask for some amount of additional</p>	<p>1 MR. FORTENBERRY: No. This is the 2 exhibit that he wrote on this morning.</p> <p>3 MR. LANG: Yeah. That's what I'm 4 talking about.</p> <p>5 MR. FORTENBERRY: And I'm saying 6 once this is transcribed, then both sides will 7 receive copies --</p> <p>8 MR. LANG: The reporter has them, 9 you're saying?</p> <p>10 MR. FORTENBERRY: Right. I don't 11 have them.</p> <p>12 MR. LANG: Okay. So I would ask 13 that you would ask -- I'll ask you directly, 14 Madam Reporter. If you could kindly give both 15 sides an extra copy of the exhibits. You 16 probably do it anyway, but we would appreciate 17 that.</p> <p>18 I also compliment you while I'm -- at the 19 moment. The instantaneous feed that I'm 20 relying upon is magnificent. Thank you.</p> <p>21 MR. FORTENBERRY: (Continuing.)</p> <p>22 Q Dr. Brister, are you familiar at all with 23 the revenue maximization contract that's being 24 referred to there?</p> <p>25 A A small bit. I mean, I am familiar that</p>
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<p>1 social workers, yes. Not nearly enough to convey the 2 need.</p> <p>3 Q Referring to Page 9 of Exhibit 154, which 4 is fiscal year 2005, I believe you may have made a 5 pencil notation there to the left.</p> <p>6 MR. LANG: Could we later have 7 copies of the annotated version of the 8 exhibits? Would you -- you're referring to 9 pencil notations, but they don't appear on the 10 copies of the exhibits that we have.</p> <p>11 MR. FORTENBERRY: Right. And --</p> <p>12 MR. LANG: So if after -- all I'm 13 saying is after the deposition, I ask we could 14 get those copies of the ones with the pencil 15 notations so we'll know what you're talking 16 about when you tell him to look at the part 17 next to the --</p> <p>18 MR. FORTENBERRY: And also, just for 19 the record, I don't have those copies either. 20 Those are the actual exhibits, I think, that 21 Dr. Brister wrote on. So at the appropriate 22 time I believe when we get our transcripts from 23 Ms. Wootton, we will each receive a copy.</p> <p>24 MR. LANG: Didn't you just hand it 25 to him?</p>	<p>1 it existed.</p> <p>2 Q And what is your knowledge of that 3 contract or its existence?</p> <p>4 A And again, this could be totally off 5 base, but it's my understanding that a firm was 6 hired -- outside consulting firm to help the agency 7 maximize federal revenue. And that might take several 8 different forms.</p> <p>9 Q And would that have been a reasonable act 10 to hire an outside consulting firm to help the agency 11 with revenue maximization?</p> <p>12 A Well, certainly, if they were not capable 13 of doing it themselves, it's reasonable to hire an 14 outside firm.</p> <p>15 Q And isn't it true that the Department of 16 Human Services did this?</p> <p>17 A It is true that they did this.</p> <p>18 Q And are you familiar with the outcome of 19 that particular consultant on revenue maximization 20 contract?</p> <p>21 A Not enough to give you the -- I see what 22 it says here. I can't go much further than that.</p> <p>23 I -- as I understand it, there were some funds 24 requested from the feds that were paid, and then there 25 was a disallowance for a part of those funds that had</p>

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<p>1 to be repaid. And that's -- I'm sort of getting that 2 from this right here, and that was my understanding, 3 also.</p> <p>4 Q Are you aware that the state has 5 currently retained another revenue maximization 6 organization?</p> <p>7 A Yes. I assume that's what the purpose of 8 retaining the firm is for. I mean, I haven't read the 9 contract. I don't know exactly what the terms of the 10 contract is.</p> <p>11 Q Do you know who is behind or who 12 contracted with this revenue maximization contract? 13 Do you have any knowledge of that?</p> <p>14 A What individual?</p> <p>15 Q Or which organization, which part of the 16 state government?</p> <p>17 A Well, I really don't. No. I mean, I 18 assume DHS, but I don't know. That could be totally 19 wrong.</p> <p>20 Q So other than what you've testified to, 21 you have no other knowledge of the revenue 22 maximization contracts?</p> <p>23 A No, no. But may I take a second? 24 Because I remember reading something here further 25 about it. May I look at fiscal year 2006?</p>	<p>1 just -- I'm just recalling something I read earlier 2 today.</p> <p>3 Q In fact, because -- strike that. 4 And that contract was, in fact, ended.</p> <p>5 Are you aware that there's currently another revenue 6 maximization contract?</p> <p>7 A Yes, you asked that before. I assume 8 that's what the company is hired to do. Perhaps among 9 other things, but that's part of it, as I understand 10 it.</p> <p>11 Q But my point, Dr. Brister -- I may not be 12 making it clear -- the contract being referenced in 13 fiscal year 2005 ended in the -- because of the 14 overassessment of the consultant, the state had to pay 15 back \$560,000 per quarter and that contract was ended. 16 Are you aware that there is now another separate 17 revenue maximization contract with another company?</p> <p>18 A Yes.</p> <p>19 MR. LANG: Objection as to form.</p> <p>20 MR. FORTENBERRY: (Continuing.)</p> <p>21 Q And what details do you know about this 22 new revenue maximization contract?</p> <p>23 A None.</p> <p>24 Q Okay.</p> <p>25 MR. LANG: May I suggest you may</p>
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<p>1 Q Sure.</p> <p>2 A This may not do anything, but let me just 3 look real quick.</p> <p>4 MR. LANG: Just for the record, 5 while Dr. Brister is looking through those 6 documents, this is another carrier where 7 documents that might have enabled Dr. Brister 8 to respond to these questions were produced 9 quite recently and after his report. And this 10 is a matter that came up later in the Bledst 11 deposition, which is also after his report.</p> <p>12 A Well, I can't put my hands on where I 13 read this in one of these documents, but somewhere it 14 says in here that after the disallowance of some of 15 these funds, and the state had to pay it back at 16 the -- I think at the rate of \$560,000 a year for -- I 17 don't know -- ten years, I think, that the state got 18 skittish, I think was the word used and discontinued 19 the contract.</p> <p>20 MR. FORTENBERRY: (Continuing.)</p> <p>21 Q All right. That is the contract being 22 referenced here in the --</p> <p>23 A I believe so. I believe so.</p> <p>24 Q -- in the FY2005 budget?</p> <p>25 A I believe that is the case, but I'm</p>	<p>1 wish to show the witness the contract if you've 2 been asking about it -- him about it.</p> <p>3 MR. FORTENBERRY: Sure. The IHHS 4 contracts that were produced in the year 2005, 5 and we'll be glad to go pull them out of the 6 documents if y'all would like and discuss them.</p> <p>7 MR. LANG: We just got it, as far as 8 I --</p> <p>9 MR. FORTENBERRY: We can get into 10 that off the record later, but the IHHS 11 contracts were produced last year.</p> <p>12 MR. LANG: In any event, regardless 13 of when it was produced, if you're going to ask 14 the witness about it, I'm suggesting you may 15 want to show it to him.</p> <p>16 MR. FORTENBERRY: Well, duly noted 17 your suggestion, and I'll go ahead and ask the 18 questions.</p> <p>19 MR. FORTENBERRY: (Continuing.)</p> <p>20 Q On Page 2 of your report, Dr. Brister, 21 the paragraph at the top, fifth line down, it says -- 22 it begins, "These inaccurate forecasts pose the risk 23 that budgetary decision-makers and the legislature." 24 Do you see that sentence?</p> <p>25 A Yes, I do.</p>

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<p style="text-align: right;">Page 134</p> <p>1 Q You used the term "posed the risk." You 2 have no actual knowledge that there are -- excuse me. 3 Strike that.</p> <p>4 You have no personal knowledge that that 5 actually happened, do you?</p> <p>6 A I do not.</p> <p>7 Q On Page 3, top paragraph, the last 8 sentence that starts, "But MDHS has displayed a lack 9 of organizational capacity." Do you see that 10 sentence?</p> <p>11 A I do.</p> <p>12 Q What do you mean by the term of "lack of 13 organizational capacity"?</p> <p>14 A The -- we're referring here to the title 15 4E eligibility documentation for children. And the 16 fact that the 4E eligibility rate is so very low, in 17 fact, the lowest in the nation at some points, and the 18 fact -- and even the fact that they had to hire these 19 consulting firms that you just referred to in order to 20 help them do this, to me, displays a lack of 21 organizational capacity to get that job done.</p> <p>22 Q But my question was, what do you mean by 23 the term "lack of organizational capacity"?</p> <p>24 A That they were not able to get -- to do 25 this job.</p>	<p style="text-align: right;">Page 136</p> <p>1 qualify for title 4E funding?</p> <p>2 A I don't know how much detail would 3 suffice for you. When you say can I do it in detail, 4 my report, in fact -- my report on Page 9, in fact, 5 lists briefly some those criteria near the bottom of 6 the page under title 4E foster care eligibility.</p> <p>7 "Eligibility criteria applied to foster 8 children: States are required to provide foster care 9 maintenance payments to AFDC eligible children moved 10 from the home of a relative." Do you want me to read 11 this paragraph? There is a list of about three 12 criteria right there.</p> <p>13 Q That's fine. You can go ahead so it's 14 clear what you're referring to.</p> <p>15 A Okay. The paragraph reads -- I'm going 16 to start at the beginning of the paragraph. "Several 17 eligibility criteria applied to the foster children on 18 whose behalf federal reimbursement is available to 19 states. States are required to provide foster care 20 maintenance payments to AFDC eligible children removed 21 from the home of a relative. If the child received or 22 would have received AFDC, which is a 1996 criteria, 23 prior to removal from the home and if the following 24 also apply.</p> <p>25 One, the removal and foster care</p>
<p style="text-align: right;">Page 135</p> <p>1 Q And what would have been sufficient 2 organizational capacity to do this job?</p> <p>3 A That is probably for an expert -- another 4 expert to say what it would take exactly to get our -- 5 to get the state's 4E eligibility rate up. So I would 6 leave it to another expert to -- to give details of 7 how the organization should do that.</p> <p>8 Q So the 4E funding is outside your area of 9 expertise?</p> <p>10 A How to increase it or -- yes, sir, I 11 would say it is. I can tell you what the number is 12 and tell you what the impact is fiscally, but I -- I 13 cannot, as an expert, tell you how or what should be 14 done to get it up.</p> <p>15 Q So you can't sit here and say what they 16 were doing was not reasonable with respect to --</p> <p>17 A It's one of those deals where the facts 18 speak for themselves. The numbers were low. They 19 weren't getting the job done. They've hired a 20 consulting firm now to help them do it. We'll see if 21 it helps. That's -- so if -- if what they were doing 22 was reasonable, it was also obviously flawed and not 23 enough to get the job done.</p> <p>24 Q Can you explain to me in detail the 25 requirements that must be met so that a child can</p>	<p style="text-align: right;">Page 137</p> <p>1 placement were based on a voluntary placement 2 agreement signed by the child's parents or guardians 3 or a judicial determination that remaining in the home 4 would be contrary to the child's welfare. Two, 5 reasonable efforts were made to eliminate the need for 6 removal or to return the child home. And three, care 7 and placement of the child are the responsibility of 8 the state."</p> <p>9 Q Do you have any knowledge of what steps 10 have been taken at DFCS to increase title 4E funding?</p> <p>11 A I do not know. Not to speak of, no.</p> <p>12 Q Can you tell me what you would do 13 differently to increase 4E funding?</p> <p>14 MR. LANG: Objection as to form.</p> <p>15 A That's not my expertise.</p> <p>16 MR. FORTENBERRY: (Continuing.)</p> <p>17 Q Okay. In order to prepare your report, 18 can you tell me what you did to educate yourself about 19 4E funding?</p> <p>20 A I -- as mentioned earlier, I -- I looked 21 at documents provided through discovery from DHS to 22 see levels of 4E funding. I examined documents on the 23 Internet, papers written, reports written that define 24 4E funding. As you say here, the eligibility of 4E 25 funding. I looked at the website of the Department of</p>

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<p style="text-align: center;">Page 138</p> <p>1 Health and Human Services and information about 4E 2 funding in order to educate myself. And I pointed out 3 I concentrated on the fiscal aspects of it rather than 4 programmatic aspects of it.</p> <p>5 Q Dr. Brister, I apologize if I've asked 6 this or you think I've asked it again, but let me try 7 to phrase it this way: If you were the division 8 director of the Department of Family and Children 9 Services, what would you do to increase 4E funding?</p> <p>10 MR. LANG: Objection as to form. 11 Go ahead.</p> <p>12 A I -- again, I'm not an expert in this. I 13 can't give you the -- a list of actions at this point, 14 except I would engage in -- in further educating 15 myself on best practices. I would do the best I could 16 to -- as I said, best practices is very important. I 17 would do my best to -- to acquire adequate resources 18 in order to get the personnel in place and the 19 training in place, and whatever else needs to be in 20 place in order to achieve this goal.</p> <p>21 MR. FORTENBERRY: (Continuing.)</p> <p>22 Q So if you're not sure how to increase the 23 4E funding, how can you give an opinion that what 24 Ricky Felder or Don Taylor or the governor have done 25 does not -- does not satisfy your reasonable minimum</p>	<p style="text-align: center;">Page 140</p> <p>1 not the fact of the condition of the child, but the 2 fact that the organization is not doing what is 3 necessary to establish eligibility of those children. 4 Therefore, to me, that is an indication 5 that the -- that the state is not doing what is the 6 responsible course of action, physically speaking. 7 I'm not the only one that points out the 4E -- the low 8 4E rates, I might add. They have been pointed out 9 by -- by other researchers, also.</p> <p>10 MR. FORTENBERRY: (Continuing.)</p> <p>11 Q And who are those researchers?</p> <p>12 A Well, the one that comes to mind is 13 the -- is the -- I think it's called the Institute of 14 Applied Research, which did the 4E waiver project 15 for -- for the state that was, in fact, discontinued 16 before it was complete. And they point out that 17 the -- that the very low eligibility rate is -- is -- 18 is contrary to what one would expect given the 19 economic conditions of the State of Mississippi.</p> <p>20 Q So which one of your standards does this 21 not satisfy?</p> <p>22 MR. LANG: Objection as to form.</p> <p>23 A One of my standards would be -- and I 24 think it's generally accepted in public finance -- is 25 that general fund dollars should, whenever possible,</p>
<p style="text-align: center;">Page 139</p> <p>1 standards that are not quantified in a written form? 2 MR. LANG: Objection as to form. 3 Argumentative. 4 A The -- there are numerous references from 5 within the agency that the 4E eligibility rate is a 6 major problem in acquiring federal funds. It's come 7 out in several documents and in depositions, I might 8 add. And therefore, with knowledge that it is a -- it 9 is a major problem of acquiring federal funds, it 10 seems -- it seems not a responsible course of action 11 to -- to continue to do or to not do whatever it is is 12 necessary to get the rate up. 13 And I've seen no indication that the rate 14 is up. And in fact, the rate is -- the eligibility 15 rate of Mississippi is, if not the lowest, one of the 16 lowest in the nation. It is the lowest by some 17 accounts, significantly lower than any other state. 18 And given the fact that one of the criteria for 4E 19 eligibility is that the child would have been eligible 20 to receive AFDC, that is an income criteria that this 21 is a poor child. 22 And given the fact that Mississippi has a 23 relatively large number of poor children, one would 24 assume that our 4E eligibility rate should be high 25 except -- so the only possible reason that it's not is</p>	<p style="text-align: center;">Page 141</p> <p>1 be used to match -- be used as they match to bring 2 down federal dollars. In fact, I think we read it 3 earlier in some of these transcripts where the 4 executive director said that, maybe more than one 5 place. And when we -- when the state does not do what 6 is necessary to have a -- at least a -- you know, a 7 reasonably high -- and I don't know what average 8 eligibility rate, something lower than what it -- 9 something higher than what it is, then that forces the 10 state to move the funding for these children that are 11 in foster care over to another capped federal program, 12 which means there is a limit on exactly how much 13 money. 14 We see testimony that those funds were 15 exhausted to the tune of something like \$3 million a 16 year, which then that money has to be paid solely out 17 of general fund dollars. So to me, it violates the 18 standard that you do whatever you can to use general 19 fund dollars to match in order to obtain federal 20 dollars in which you're doing here by not -- by having 21 such a low 4E rate and allowing it to exist, is you 22 are using state dollars solely to support foster care 23 when the federal government is more than willing to 24 share the cost. 25</p>

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1 MR. FORTENBERRY: (Continuing.)	1 You're not limiting to foster children there, are you?
2 Q And you referenced LBO hearings. And is	2 A Ask again, please, sir.
3 that not what the executive directors told the	3 Q When you give an estimate as to the cost
4 legislature was being hampered because of the lack of	4 of the State of Mississippi of abuse and neglect of
5 general fund dollars?	5 children --
6 A They said that -- well, they -- I don't	6 A Yes, I see that, yes.
7 know they were talking about -- they didn't talk about	7 Q -- that is not limited to foster
8 the eligibility rate, I don't believe, in these. I	8 children, is it?
9 don't remember them talking about that. They did say	9 A No, no, no.
10 that they did not have enough general fund dollars to	10 Q Okay. What's the difference between
11 pull down federal dollars. That's not what I'm	11 general funds and special funds when you talk about a
12 talking about.	12 state budget?
13 I'm talking about using state money for	13 A General funds are state monies. Special
14 purposes other than pulling down federal -- it's not a	14 funds are, for the most part, federal monies.
15 matter of not having enough. It's about using what	15 Q And do you also have to have spending
16 you have in -- for -- for using what you have for	16 authority in addition to money budgeted? Is that
17 purposes other than pulling down federal dollars.	17 clear as mud?
18 Q And you're being critical of the	18 A You do. Yes, you do have to have
19 executive director and division director and the	19 spending authority.
20 governor, whoever that may be, but you cannot sit here	20 Q In other words, if the federal government
21 and tell us how to improve the 4E penetration rate?	21 says here's \$100 million to the Department of Human
22 MR. LANG: Objection as to form.	22 Services and the legislature has not given \$100
23 A I'm being critical from a fiscal	23 million authority, then that money cannot be used,
24 perspective that this would have been a very --	24 correct?
25 this -- this would have been not only a reasonable	25 A If the legislature does not give the
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1 thing to concentrate on as to get up to 4E rate, but	1 agency the authority to pull down the federal funds,
2 the responsible thing to do is to concentrate efforts	2 then those monies could not be used. I don't think
3 on getting up -- in increasing the 4E rate so that	3 it's -- would ever be a problem to ask for increase
4 general fund dollars would not have to be used for	4 authority to pull down federal funds, so that is not
5 purposes other than for matching federal dollars.	5 usually the case.
6 MR. FORTENBERRY: (Continuing.)	6 Q And how do you go about asking for that
7 Q Was it not a reasonable lack to hire an	7 increased authority?
8 outside consultant to assist in that area?	8 A I'm -- I can't -- I don't know the exact
9 A Yes. As I said before, I think that is	9 process. I would think it starts with a request to --
10 reasonable if you don't believe you can do it without	10 to the -- I don't know, the office of budgets and
11 the consultant.	11 accounting or something like that and explaining the
12 MR. LANG: Did you want to take a	12 situation. And I don't know. Perhaps there's a
13 break?	13 governor or a legislative committee involved. I
14 MR. FORTENBERRY: I'm fine, but	14 really don't know.
15 if --	15 And let me qualify. I would hope that
16 MR. LANG: Okay. Just some time was	16 there is a mechanism that you can get increased
17 passing.	17 authority if you need it to pull down federal funds,
18 MR. FORTENBERRY: (Continuing.)	18 if they become available.
19 Q Page 4 of your report.	19 Q Have you ever prepared or participated in
20 A Yes, sir.	20 preparing a budget on behalf of a state agency or a
21 Q Numerical paragraph down at the bottom,	21 division of a state agency?
22 No. 4, Long-term Impact of Abuse and Negligent.	22 A No, sir, not in any significant form.
23 A Yes.	23 Q Have you ever participated in going to
24 Q And you give estimates regarding total	24 the legislature or lobbying legislators on behalf of
25 cost of abuse and neglect of children in Mississippi.	25 the state or a state agency or a state agency division

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1 with respect to their budget?	1 importance that we do this for the well being of the
2 A I have not.	2 abused and neglected children.
3 Q Dr. Brister, are there -- is there any	3 MR. FORTENBERRY: (Continuing.)
4 literature, text or articles that you consider to be	4 Q And what words, in your opinion, would
5 authoritative on the subject of what constitutes the	5 have been forceful enough?
6 minimal practice standards or reasonable, professional	6 MR. LANG: Objection as asked and
7 judgment for funding, spending, fiscal management or	7 answered.
8 budgetary issues for a state human services agent --	8 A I don't know if it's words as much as an
9 agency or foster care system?	9 entire, you know, argument that should be made and
10 A No. I cannot direct you to a particular	10 made in a way that presents the case to the
11 written source.	11 legislature so that they -- so that they get the
12 MR. FORTENBERRY: Let's take a break	12 message. I don't think I would say any particular
13 now.	13 words. It's an argument that needs to be made in a
14 MR. LANG: Okay.	14 complete fashion.
15 (Off the record.)	15 MR. FORTENBERRY: (Continuing.)
16 MR. FORTENBERRY: (Continuing.)	16 Q If the legislature had funded or given
17 Q Dr. Brister, just a few more questions	17 more general fund dollars to the Division of Family
18 and I think we'll be able to wrap up.	18 and Children Services -- strike that.
19 A All right.	19 What amount of money would it have taken
20 Q Other than the opinions expressed in your	20 for the legislature to have adequately funded the
21 report, are there any other opinions that you expect	21 division of Family and Children Services?
22 to testify to at the trial of this case?	22 A I've not done that analysis to give you a
23 A No.	23 dollar figure on that.
24 Q Are there any opinions that you want to	24 Q Then how do you know that the money that
25 add to your report?	25 has been funded has not been adequate?
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1 A No.	1 A Well, the statements are plentiful from
2 Q Are there any opinions you want to take	2 even within the division that we don't have enough
3 out of your report?	3 general fund dollars to draw down these federal
4 A No.	4 dollars. We don't have enough general fund dollars to
5 Q Are there any opinions that you want to	5 get our case load down. We don't have enough general
6 clarify in your report?	6 fund dollars for this or that. So I mean, it is -- it
7 A No.	7 is a recurring theme in the documents.
8 Q Just before we took this last break, on	8 Q What number of social workers would have
9 one of your answers, you used the word forceful	9 satisfied your standards?
10 enough, that the executive director or governor,	10 A It is to -- to satisfy the standards set
11 division director was not forceful enough in	11 forth by the National Child Welfare League of America.
12 requesting funds or positions from the legislature.	12 And I know I'm getting that name wrong. It would
13 Do you recall that?	13 have -- and this has been expressed within the agency.
14 A Yes.	14 it would -- at different times anywhere from 500 to
15 Q If they weren't forceful enough, can you	15 700 social worker -- additional social workers in
16 tell me exactly what words they could have used that	16 order to bring it down to the optimal level.
17 would have satisfied your standards?	17 Q How many states in the United States
18 MR. LANG: Objection as asked and	18 satisfy the standards set forth by the Child Welfare
19 answered.	19 League of America as to the number of social workers?
20 A I think I would have -- I'm a number	20 A I don't know.
21 cruncher. I would have looked for numbers that here	21 Q Do you know whether that is an actual
22 is the federal standards, here is our case loads,	22 number that should be used or an optimal goal?
23 here's how far we're off, here's how many we need,	23 A It is a -- it is certainly a goal that
24 here's how much it's going to cost to get us there.	24 should be -- that you should shoot for. There's no
25 This is -- and then forcefully emphasize the	25 doubt about that. And -- and according to these

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<p style="text-align: right;">Page 150</p> <p>1 experts in the national association, if you want to -- 2 to protect the children, benefit the children that 3 are in -- that are under the custody of the agency, 4 these are the numbers that should be used. So 5 certainly, you should -- there are goals to shoot for 6 and hopefully you can get it.</p> <p>7 Q And if you do not, that means your 8 actions were unreasonable?</p> <p>9 A If you do not, by the extent that 10 Mississippi does not, I think it is unreasonable.</p> <p>11 Q And what is that extent?</p> <p>12 A Well, when the optimal -- I mean, when it 13 is labeled by internal documents as we're at the 14 danger level, children are going to die, the -- I want 15 to say in one document it is beyond danger in many 16 counties. You know, that's -- that sort of 17 terminology, I think, is -- represents a case load 18 that's unreasonable.</p> <p>19 Q So you're basing your opinion on internal 20 documents of the Department of Human Services as 21 opposed to what your standards are?</p> <p>22 MR. LANG: Objection as to form.</p> <p>23 A Well, that is -- that is a part of a 24 formulation of what a standard would be, is what is -- 25 what does the staff and administration of DHS think is</p>	<p style="text-align: right;">Page 152</p> <p>1 Q Are you aware of that dollar figure in 2 any other state in the United States?</p> <p>3 A No.</p> <p>4 Q Are you aware how it compares with those 5 states compared to Mississippi?</p> <p>6 A If you're asking am I aware of the total 7 budget of the Division of Family and Children Services 8 divided by the number of children in custody or 9 divided by the number of the children in the state or 10 something like that, I cannot pull those up. I've 11 seen -- I think I've seen some of those numbers as 12 budget spending, but I can't call them up right now. 13 Does not compare favorably, I don't believe.</p> <p>14 Q Are you familiar with how many social 15 worker positions have been appropriated to the 16 Department of Human Services, yet, the legislature 17 chose not fund those positions?</p> <p>18 A How many positions that they chose not to 19 fund?</p> <p>20 Q Let me back up and ask it this way: Are 21 you aware that the legislature appropriates money for 22 the Department of Human Services to operate, correct?</p> <p>23 A Correct.</p> <p>24 Q And you're aware that they also 25 appropriate positions or what is -- what are called</p>
<p style="text-align: right;">Page 151</p> <p>1 adequate. And then as I said before, there are 2 external standards also that provide guidance.</p> <p>3 MR. FORTENBERRY: (Continuing.)</p> <p>4 Q How much money should the State of 5 Mississippi spend per foster child in order to meet 6 your standards?</p> <p>7 MR. LANG: Objection as to form.</p> <p>8 A Again, I have not done that study and the 9 question would -- and even if you clarified the 10 question, I'm not sure I could answer because I've not 11 done that study. But I couldn't give you a dollar 12 figure.</p> <p>13 MR. FORTENBERRY: (Continuing.)</p> <p>14 Q Do you -- are you aware of the annual 15 cost of caring for a foster child in the State of 16 Mississippi?</p> <p>17 A I'm aware of the board rates, if that's 18 what you're referring to.</p> <p>19 Q Well, are you aware of what it costs 20 annually for a foster child in the State of 21 Mississippi, to care for that child?</p> <p>22 A You could certainly back into that number 23 by the budget divided by the number of children. I 24 can't pull it up. It's not on -- in my head right 25 this second.</p>	<p style="text-align: right;">Page 153</p> <p>1 PINS, P-I-N-S, for positions at various state 2 agencies?</p> <p>3 A Correct.</p> <p>4 Q So the legislature controls not only the 5 money that is appropriated, but also the number of 6 employees that may be working for a particular agency?</p> <p>7 MR. LANG: Objection as to form.</p> <p>8 A Well, we've covered, you know, who's 9 responsible, but, yes, the legislature has authority.</p> <p>10 MR. FORTENBERRY: (Continuing.)</p> <p>11 Q And are you aware that the legislature 12 may appropriate positions but not appropriate the 13 money to fund those positions?</p> <p>14 A I believe that is possible.</p> <p>15 Q And if you have a number of social worker 16 positions that have been appropriated but not funded, 17 what good would it do to ask the legislature to add 18 more social worker positions to the agency when they 19 have not funded the ones in existence?</p> <p>20 MR. LANG: Objection.</p> <p>21 Argumentative.</p> <p>22 A I would say it would do very little good.</p> <p>23 In previous answers, I've always coupled they didn't 24 request social workers, nor did they request the 25 funding to fill those positions.</p>

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<p style="text-align: right;">Page 154</p> <p>1 MR. FORTENBERRY: That's all I have, 2 Dr. Brister. Thank you. 3 BY THE WITNESS: Thank you. 4 MR. LANG: May we have a moment? I 5 just want to confer with my co-counsel as to 6 whether or not we want to question Dr. Brister. 7 We'll be back in five minutes. 8 MR. FORTENBERRY: Sure. 9 (Off the record.) 10 MR. LANG: I did want to make a 11 statement before I forget it. You had asked 12 Dr. Brister whether he wants to make any 13 changes to his report or anything of that 14 nature. I just wanted to, I guess, alert you 15 or put you on notice to the possibility that 16 due to documents and testimony being produced 17 and taken respectively after his report and due 18 to the fact that discovery is still continuing 19 and we can predict what might still come up, it 20 is possible that we may discuss with 21 Dr. Brister the potential of amending or 22 supplementing his report so that it will 23 reflect what may be developed or what has been 24 developed since his report, and what he may not 25 have yet had a chance to review.</p>	<p style="text-align: right;">Page 156</p> <p>1 CERTIFICATE OF REPORTER 2 3 I, AMANDA MAGEE WOOTTON, Court Reporter and 4 Notary Public for the State of Mississippi, do hereby 5 certify that the above and foregoing pages contain a 6 full, true and correct transcript of the proceedings 7 had in the aforesigned case at the time and place 8 indicated, which proceedings were recorded by me to 9 the best of my skill and ability. 10 I also certify that I placed the witness 11 under oath to tell the truth and that all answers 12 were given under that oath. 13 I certify that I have no interest, 14 monetary or otherwise, in the outcome of this 15 case. 16 17 This the 4th day of April 2006. 18 19 20 AMANDA M. WOOTTON 21 22 My Commission Expires: 23 December 15, 2006 24 25</p>
<p style="text-align: right;">Page 155</p> <p>1 MR. FORTENBERRY: And I find it 2 difficult to respond to what may happen, so my 3 point -- my point would be that if it's 4 necessary that you need to file some sort of a 5 pleading or a letter or so forth, do so and I 6 will respond accordingly once I see what it is. 7 MR. LANG: All right. 8 (Off the record.) 9 MR. LANG: We have no questions and 10 I thank defendant's counsel for the courtesies 11 they've shown us during our visit here today. 12 MR. FORTENBERRY: Thank you. That's 13 all we have at this time. 14 (CONCLUSION OF DEPOSITION.) 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 157</p> <p>1 CERTIFICATE OF DEPONENT 2 3 4 I, _____, do hereby 5 certify that the foregoing testimony is true and 6 accurate to the best of my knowledge and belief, as 7 originally transcribed, or with the changes as noted 8 on the attached Correction Sheet. 9 10 11 12 13 14 15 16 17 18 Subscribed and sworn to before me 19 this the _____ day of _____, 2006. 20 21 22 _____ 23 Notary Public 24 My Commission Expires: 25</p>

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1 CORRECTION SHEET
2

3 I, _____, do hereby
4 certify that the following corrections and additions
5 are true and accurate to the best of my knowledge and
6 belief.
7

8 CORRECTION PAGE LINE REASON
9 _____
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Subscribed and sworn to before me
20 this the _____ day of _____, 2006.
21

22 Notary Public
23 My Commission Expires:
24
25